IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4006 OF 2005

Kamlakar @ Kamlya Balu Vishe. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri N.N.Gawankar with Shri Arfan A.H.E.A.Sait for the Applicant.

Shri K.V.Saste, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 15th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for State. Offence registered against the Applicant and other accused is under section 302, 307, 324, 325, 326 read with sections 147, 148 and 149 of the Indian Penal Code. The learned Counsel appearing for the Applicant submitted that the only allegation made against the Applicant is regarding assault on the witnesses Kanha Mulchand Gharat and Bango Shankar Gharat on the right hand and left downward side of the chest. He submitted that the injuries on the persons are of simple nature. He placed reliance on the order dated 13th June 2005 passed by this Court in Criminal Application No.3315 of 2005 by which the co-accused Kaluram Mangal Tarmale was enlarged on bail. He submitted that in case of the said Kaluram the only allegation against him was that he has assaulted on the

person of a witness and caused injury in the nature of incised wound on the right hand. He pointed out that the said Kaluram was ordered to be enlarged on bail as no role has been specifically ascribed to him in the assault on the deceased. He has placed reliance on the other orders passed by this Court in case of other co-accused.

2. The learned A.P.P. submitted that at least four witnesses have stated that the Applicant was carrying a sword and the Applicant has assaulted them. The learned A.P.P. therefore submitted that the Applicant is not entitled to be enlarged on bail even by reason of parity.

3. One Balaram Mukund Gharat has stated in his statement that 28 persons including the Applicant herein who were carrying swords, iron rods, sticks etc. were assaulting his deceased brother Sitaram. He has not ascribed any specific role to the Applicant. The witness Kanha has stated that the Applicant assaulted him on his right hand by a sword. Another witness Balkrishna stated that he was assaulted by the Applicant on the left side of his head by a sword. Witness Naresh has stated that the Applicant was having a sword in his hand. Witness Bhango Shankar Gharat has stated that the Applicant assaulted him by a sword. Lastly witness Madhukar stated that the Applicant assaulted him by a

sword. The injury certificate of Balkrishna shows two injuries which were skin deep incised wounds. Injury certificate of Kanha shows that there was one incised wound on forearm which was skin deep and two abrasions. The injury certificate of Bango shows that there was a stab injury.

4. It is thus apparent that the number of witnesses have stated that the Applicant was carrying a sword in his hand and the allegation is of assault on atleast three witnesses. A perusal of the orders passed by this Court including the order dated 13th June 2005 shows that number of co-accused have been enlarged on bail. The accused who are enlarged on bail have not taken any specific part in the assault on the deceased. In one of the orders passed on 12th April 2005 in case of a co-accused, this Court has observed that in the F.I.R. the names of 28 assailants have been named and number of witness have also named 28 assailants serially which creates doubt about the involvement of the concerned persons. In the present case it is true that the allegation is regarding assaulting atleast three witnesses by a sword. However, none of the injuries appearing on the persons of the injured are shown to be serious injuries. The incident in question has taken place long back and the charge sheet has been filed. The allegation is that the incident was on account of group rivalry. The injuries suffered by the victims are

not serious injuries and most of them are simple injuries. There is no specific role ascribed to the Applicant in actual assault on the deceased. Several other accused who have played no role in the actual assault on the deceased have been enlarged on bail. The Applicant is, therefore, entitled to be enlarged on bail.

5. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.I-96 of 2004 Kalyan Taluka Police Station, subject to furnishing a personal bond of Rs.20,000/- with one or two local sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iii) The Applicant shall not enter Thane District during the pendency of the trial, except for attending the Court cases on the specified dates.

(iv) The Applicant shall inform the address of his place of residence to the Investigating officer as well as the trial Court within one week from the date of release. In addition, the Applicant shall report to the nearest Police Station, once in a month, on first Saturday of every English Calender month.

(v) The Applicant shall extend full co-operation to the Trial Court for early disposal of the trial and if the Trial Court is of the opinion that the Applicant is responsible for the delay of the trial, that fact be recorded in the Roznama which will be a ground for cancellation of the trial.

(vi) Application is disposed of in above terms.

Judge.